



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**FedEx**

Mr. Donald Killmeyer  
Chico Enterprises, Inc.  
331 Beechurst Avenue  
Morgantown, West Virginia 26505

**Re: Notice of Violation R3-04-NOV-UST-08**  
**Underground Storage Tank Inspection**  
**Inspection Date: October 20, 2003**  
**Dairy Mart Nos. 4 and 6**  
**Facility ID: 3103958 and 3103960**

Dear Mr. Killmeyer:

On October 20, 2003, the U.S. Environmental Protection Agency, Region III ("EPA") conducted an Underground Storage Tank inspection under West Virginia's Underground Storage Tank Rule (WVUSTR) Title 33 Series 30 and under the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6991 *et seq.*, and regulations promulgated pursuant thereto, as codified at 40 C.F.R. Part 280, at Dairy Mart No. 4, 3312 University Avenue, Morgantown, West Virginia 26505 and Dairy Mart No. 6, 1205 Dorsey Avenue, Morgantown, West Virginia 26505. Based on the October 20, 2003 inspections and/or review of other pertinent information, EPA has determined that Chico Enterprises, Inc. is violating regulations promulgated Under Subtitle I of RCRA. As a result of this finding, the Agency is issuing this **Notice of Violation (NOV)**. The specific violation is:

1. Failure to have line leak detectors tested annually (WVUSTR § 33-30-2.1)[40 CFR § 280.44(a)].

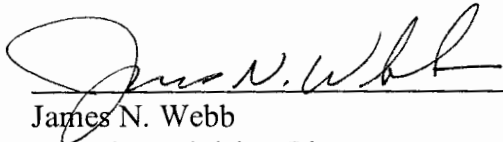
Within thirty (30) calendar days of the receipt of this NOV, please submit documentation of any measures Chico Enterprises, Inc. has taken or is taking to bring the violation(s) and/or area(s) of concern noted above into compliance with the regulations, or provide an explanation of facts and circumstances which lead you to believe that EPA's determination of the alleged violation is in error. If the compliance measures identified are planned or are on-going, please provide a schedule for when the compliance measures will be completed.

Section 9006 of RCRA authorizes EPA to take an enforcement action whenever it is determined that any person has violated, or is in violation, of any requirement of RCRA as amended. Such an action could include a penalty of up to \$27,500 per day of violation. In addition, failure to achieve and maintain compliance with the regulations cited in this Notice of Violation may be treated as a repeated offense and may constitute a "knowing" violation of Federal law.

*Customer Service Hotline: 1-800-438-2474*

This Notice of Violation is not intended to address all past violations, nor does it preclude EPA from including any ongoing, including the ones cited in this letter, or past violations in any future enforcement action. The response to this NOV shall be addressed to:

David Toth, Environmental Engineer  
Environmental Protection Agency (3WC31)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103



James N. Webb  
Associate Division Director  
Office of Enforcement  
Waste and Chemicals Management Division

July 30, 2004  
Date

cc: M. Dorsey (WVDEP)

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**SUBJECT:** RCRA Violation - Notice of Violation  
Mr. Donald Killmeyer  
Chico Enterprises, Inc.  
331 Beechurst Avenue  
Morgantown, West Virginia 26505

**FROM:** Carol Amend, Chief  
RCRA Compliance and Enforcement Branch (3WC31)

**TO:** James N. Webb, Associate Director for Enforcement  
Waste & Chemicals Management Division (3WC30)

I recommend that you sign the attached Notice of Violation which addresses the violation of Underground Storage Tank (UST) Regulations pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§ 6991 et seq., and regulations promulgated pursuant thereto, as codified at 40 C.F.R. Part 280, by Chico Enterprises, Inc. as owner and operator of the underground storage tanks at the Dairy Mart No. 4, 3312 University Avenue, Morgantown, West Virginia 26505 and Dairy Mart No. 6, 1205 Dorsey Avenue, Morgantown, West Virginia 26505.

**A. Respondent**

Chico Enterprises, Inc. owns and operates the underground storage tanks located at Dairy Mart No. 4, 3312 University Avenue, Morgantown, West Virginia 26505 and Dairy Mart No. 6, 1205 Dorsey Avenue, Morgantown, West Virginia 26505. Mr. Randy Elliot, a representative of the company and Art Loder of the West Virginia Department of Environmental Protection (WVDEP) participated in the October 20, 2003 inspection of Dairy Mart No. 4 performed by Clark Conover of EPA. Ms. Sharon Bowser a representative of the company and Art Loder of the WVDEP participated in the October 20, 2003 inspection of Dairy Mart No. 6 performed by Clark Conover of EPA.

**B. Type of Action**

CONCURRENCES							
SYMBOL	▶ 3WC31	3WC31					
SURNAME	▶ <i>D. Amend</i>	M. Owens					
DATE	▶ 4/14/04						